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TESTIMONY OF ATTORNEY JAMES BHANDARY-ALEXANDER IN SUPPORT OF
HOUSE BILL No. 5071 and SENATE BILL No. 32.

Good Afternoon, Senator Osten, Representative Tercyak, and Committee members. My name is James Bhandary-Alexander. I am an attorney at New Haven Legal Assistance. Our agency represents low-income people throughout New Haven County, including in the Lower Naugatuck Valley and the shoreline. My job at New Haven Legal Assistance is to represent low-wage workers, especially in cases of wage theft, and so I am thankful to be here in that capacity to testify in support of both House Bill No. 5071, which would strengthen wage and hour law enforcement, and Senate Bill No. 32, which would raise the minimum wage.

The Connecticut statutes that protect workers from wage theft, Conn. Gen. Stat. §§ 31-68 and 31-72, allow for the award of double damages in cases of non-payment of wages. However, CT case law has held that a finding of bad faith, arbitrariness, or unreasonableness is required to support an award of double damages. Thus, it is harder for workers to collect double damages under Connecticut law. Effective enforcement laws must deter violations by employers. Ten states actually allow treble damages (AZ, ID, ME, MD, MA, MI, NB, ND, VT, WV). In most of those states, treble damages are mandatory, not discretionary.

The bill, as currently before the committee, only contains an amendment to Conn. Gen. Stat. 31-72, the enforcement provision for overtime and unpaid wage violations. The same amendment should be made to Conn. Gen. Stat 31-68, which is the enforcement provision for minimum wage violations. I have attached substitute language to include 31-68, which was inadvertently left out of the proposed language from the committee.

House Bill No. 5071, as amended, would require employers who commit wage theft to pay double damages. Wage theft occurs when an employer ignores their obligation to pay the minimum wage or overtime. Wage theft also occurs when employers simply do not pay their employees at all, or do not pay what they promised. Nobody needs to point to a political, ethical, or legal philosophy to understand what is wrong with wage theft. And although faith leaders from across the country have come together in organizations like Interfaith Worker Justice to fight wage theft, nobody needs a pastor, priest, imam or rabbi to tell them what is wrong with wage theft. It is a gut-level thing. Everybody in this room has depended on a paycheck. Everybody in this room understands the phrase "a fair day's work for a fair day's pay."

Nobody depends more on fair treatment than low-wage workers, who work paycheck to paycheck. Restaurant, retail, construction, day labor, long term care, home health care and agricultural jobs are particularly impacted by wage theft violations. Unfortunately, the truth is this is the group that is most victimized by employer wage theft. I know this because these people are my clients. Every week, I talk to people who were paid less than the minimum wage. Every week, I talk to people who were not paid overtime. Every week, I talk to people who didn't receive their last paycheck. Every week, I talk to people who haven't been paid for

multiple weeks, and sometimes multiple months. Sometimes these people are too scared to complain, sometimes they are told that if they don't keep working for nothing they'll never get paid anything at all. Sad to say, but many of these employers have built this into the business model. If they do get caught, because double damages are awarded on a discretionary and not mandatory basis, they can just settle the case for a fraction of what they owe, or at the worst, exactly the amount of what they owe. In other words, it can and often does cost the employer nothing to break the law.

This is why we need to make double damages in these cases mandatory. We need a firm financial disincentive to wage theft. We need to punish employers who build wage theft into their business model in order that the vast majority of employers, who comply with wage and hour laws, have a chance to compete on a fair basis. It is patently unfair that employers that comply with the law and treat their workers fairly should be undercut by employers that do not.

I also want to speak briefly about Senate Bill No. 32. The minimum wage should go up. My clients have trouble paying their rent, keeping their lights on, paying for childcare, and paying for transportation. Not for nothing, the more of the essentials of life low-wage workers can pay for themselves the less they need from public and private social services providers. And these workers do things society needs done: build houses, clean offices, prepare and serve meals, wash dishes, wash cars, bag groceries, care for our kids.

Crucially, as we raise the minimum wage we need to bring down the amount of the minimum wage that can be accounted for by the tip credit. In the first quarter of 2013, there were over 27,000 waiters and waitresses and 8,000 bartenders in Connecticut. More than half of the tipped workers in Connecticut make less than \$10.10 per hour. In the first quarter for 2013, the median wage for waiters and waitresses was \$9.26, and the tenth percentile wage was \$8.64. The median wage for bartenders was \$9.19, and the tenth percentile wage was \$8.63. Ten states set the tipped worker wage at a higher percentage of the regular minimum wage than Connecticut: California (100%), Washington (100%), Oregon (100%), Nevada (100%), Montana (100%), Minnesota (100%), Arkansas (100%), Hawaii (97%), West Virginia (80%), and North Dakota (67%). Connecticut is well-known for having some of the best restaurants in the country – best food, best atmosphere, best service. The people who work there should not themselves need to be on food stamps. But statistics indicate that servers, for example, are twice as likely to depend on food stamps than the average worker. We can do better.

People who work hard doing things society needs done should not live in poverty. Candidly, this bill won't get us there – but it does get us closer. This is another gut-level thing and I hope you will support this bill.

Amended language for HB 5071

Sec. 31-68. Collection of minimum or overtime wage.

(a) If any employee is paid by his employer less than the minimum fair wage or overtime wage to which he is entitled under sections 31-58, 31-59 and 31-60 or by virtue of a minimum fair wage order he [may] shall recover, in a civil action, twice the full amount of such minimum wage less any amount actually paid to him by the employer, with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between him and his employer to work for less than such minimum fair wage or overtime wage shall be no defense to such action. The commissioner may collect the full amount of unpaid minimum fair wages or unpaid overtime wages to which an employee is entitled under said sections or order, as well as interest calculated in accordance with the provisions of section 31-265 from the date the wages should have been received, had they been paid in a timely manner. In addition, the commissioner may bring any legal action necessary to recover twice the full amount of the unpaid minimum fair wages or unpaid overtime wages to which the employee is entitled under said sections or under an order, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. The commissioner shall distribute any wages or interest collected pursuant to this section to the employee or in accordance with the provisions of subsection (b) of this section.

Section 31-72. Civil action to collect wage claim, fringe benefit claim or arbitration award

When any employer fails to pay an employee wages in accordance with the provisions of sections 31-71a to 31-71j, inclusive, or fails to compensate an employee in accordance with section 31-76k or where an employee or a labor organization representing an employee institutes an action to enforce an arbitration award which requires an employer to make an employee whole or to make payments to an employee welfare fund, unless the employer proves a good faith basis for believing that its underpayment of wages was in compliance with the law, such employee or labor organization [may] shall recover, in a civil action, twice the full amount of such wages, with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between him and his employer for payment of wages other than as specified in said sections shall be no defense to such action. The Labor Commissioner may collect the full amount of any such unpaid wages, payments due to an employee welfare fund or such arbitration award, as well as interest calculated in accordance with the provisions of section 31-265 from the date the wages or payment should have been received, had payment been made in a timely manner. In addition, the Labor Commissioner may bring any legal action necessary to recover twice the full amount of unpaid wages, payments due to an employee welfare fund or arbitration award, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. The commissioner shall distribute any wages, arbitration awards or payments due to an employee welfare fund collected pursuant to this section to the appropriate person.